IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
:::
ORDER

S.B. Civil Writ Petition No.3780/2005-Manager, Atlanta Infrastructure Ltd. Vs. State of Rajasthan & Ors.

And

S.B. Civil Writ petition No.4155/2005-Manager, Atlanta Infrastructure Ltd. Vs. State of Rajasthan & Ors.

UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

Date Of Order :: 20th November, 2006

PRESENT

REPORTABLE

Hon'ble Mr. Justice Mohammad Rafiq

Mr. Harish Purohit, Advocate, for the petitioner.
Mr. R. Dave, Dy. Government Advocate, for the respondents.

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These two writ petitions raise a common questions of fact and law and therefore are being taken up together for disposal. In both the writ petitions, the petitioner is also common and two orders passed on the same date have

been challenged. However, for deciding the controversy, facts of S.B. Civil Writ Petition No.3780/2005- Manager, Atlanta Infrastructure Ltd. Vs. State of Rajasthan & Ors. are being referred.

In the first writ petition namely, S.B. Civil Writ Petition No.3780/2005, what is under challenge is the corrigendum issued by the appropriate Government on 9th May, 2005 vide which it has amended the name of the union in the notification earlier issued by it. In second writ petition namely S.B. Civil writ petition No.4155/2005 also under challenge is the corrigendum issued by the appropriate Government on 9th May, 2005 by which also an amendment was made in the notification of reference dated 14.12.1999. By this notification the appropriate Government had made a reference to learned labour court, Udaipur on the question of validity of retrenchment of certain employees of the petitioner from their service on 15.7.1999. In both the notifications, the appropriate Government while making a

reference under Section 10 of the Industrial Disputes Act, 1947 (in short the Act of 1947) mentioned the name of the union as Atlanta Infrastructure Shramik Sangh Bhathera House, Fatehpura, Udaipur while in first notification dated 13.10.1999 as originally issued, the appropriate Government had mentioned the name of the union as Atlanta Infrastructure Shramik Sangh, Bathera House, Fatehpura, Udaipur. By the impugned corrigendum issued in both the cases, however the appropriate Government sought to substitute the names of the aforesaid unions by Atlanta Shramik Sangh, Udaipur.

A short but an important question that arises for consideration in these writ petitions is whether the appropriate government having once issued a notification of reference under Section 10 of the Act of 1947 can at later point of time made an amendment therein so as to substitute the names of the parties, which in the present case is the name of the union and the related question

whether in a case like present one, can the appropriate Government make an amendment in the terms of reference after it is devisted of its powers and has become funtuous officio once notification of the reference is published.

The Manager, Atlanta Infrastructure Ltd (in short management) has challenged the aforesaid orders of corrigendum on the premise that these orders are without jurisdiction and have been passed in utter disregard of principles of natural justice inasmuch as no opportunity of hearing was provided to the management prior to passing them. According to the petitioner, this has in fact resulted into changing the nature of the proceedings. In the present case, the union named in the original order of reference had been agitating grievance of the workers and espousing their case. It has been argued that it is settled law that when a reference is made, the statement of claim can be submitted only by a union authorized to represent the cause of the workmen and the filing of statement of claim by the

newly substituted union respondent no.3 was completely without authority of law and, therefore, rightly objected to by the petitioners. It was at this stage that the respondent no.3 made an application to the appropriate Government seeking amendment in the order of reference. It has been argued that a corrigendum is confined to merely correcting clerical or typographical mistakes. Such a power however in the present case has been arbitrarily exercised by the appropriate Government, which has virtually changed the nature of the dispute by replacing an altogether new party to dispute. It has further been argued that the corrigendum having been made at a very belated stage of proceeding at the stage of final hearing it lacks bonafide because it was made at the instance of respondent no.3 to frustrate just objection raised by the management.

I have heard Shri Harish Purohit, learned counsel for the petitioner and Shri Rameshwar Dave, learned Dy. Government Advocate and perused the record.

Shri Harish Purohit in support of his argument has cited the judgment of the Hon'ble Supreme Court in State of Bihar Vs. D.N. Ganguly & Ors reported in AIR 1958 SC 1018 and argued that the Government having made reference under Section 10 of the Act of 1947 had no legal authority to either cancel the reference or supersede or otherwise amended it at any such subsequent state before passing of the award. The order passed by the Government therefore is not in accordance with law. He further argued that originally the respondent no.3 was a union constituent of Mewar Wager Mazddor Sangh but subsequently when it was registered as an independent union by the name of Atlanta Infrastructure Ltd. it submitted statement of claim in its own name on 17.6.1999. He referred to the statement of Umed Kumar and the complaint filed by one Shri Atul Bharati in which they stated that name of their union was initially Atlanta Infrastructure Shramik Sangh, Bathera House, Fatehpura, Udaipur whereas the fact is that on that date their union was not even registered by that name. The

respondent no.3 has thus not come with clean hands. The impugned order is therefore liable to be set aside and the writ petition deserves to be allowed.

In M/s. Dabur (Dr. S.K. Burman) Private Ltd, Deoghar, Bhiar Vs. The Workmen reported in AIR 1968 SC 17, the Hon'ble Supreme Court dealing with the case in which the appropriate Government subsequent to making of reference sought to substitute the word "Ranchi" from Patna with regard to the labour court to which reference was made, an argument was raised that while reference was originally sought to be made to labour court, Patna in the first notification in the subsequent one, it was replaced by Ranchi and that the view of the High Court that it was a mere clerical error was not sustainable because the labour court, Patna to which reference was originally made had no jurisdiction to entertain the dispute. The Hon'ble Supreme Court rejected the argument holding that this only reflected that the Government "in fact intended to make the

reference to the labour court, Ranchi; but, while actually scribing the order of reference, a mistake was committed by the writer of putting down Patna instead of Ranchi." It was further held that "such a clerical error can always be corrected and such a correction does not amount either to the withdrawal of the reference from, or cancellation of the reference to, the Labour Court, Patna.

In M/s. Hochtief Gammon Vs. State of Orissa & Ors reported in (1975) 2 SCC 649, the dispute pertained to the payment of bonus to the labouers engaged by M/s. Hochtief Gammon. In August, 1957, the Hindustan Steel Ltd (in short company) and M/s. Hochtief Gammon (in short contractor) entered into a contract for execution of the foundation and civil engineering working of the Hot and Cold Rolling Mills at Rourkela including the purification and other civil engineering work connected with the water supply to the rolling mills. As per the contract, all payments to the labour were to be made by the said

company. On demand of the union, reference was made to the labour court on the question whether the workers of the contractor were entitled to any bonus. The contractor declaiming his liability requested the labour court for impleadment of the company as respondent, but the application was dismissed by the labour court and the order was not only upheld by the High Court but also Supreme Court. In those facts, the contractor submitted an application to the State Government seeking modification of the earlier reference order to the industrial tribunal by adding the said company as party respondent to decide who was liable to pay bonus. When the Government rejected the application, the contractor approached the High Court under Article 226 of the Constitution of India for writ of mandamus, which was also dismissed and matter then reached back to Hon'ble Supreme Court. In those facts, the Hon'ble Supreme Court observed that "Government's order in this case really amounts to an outright refusal to consider relevant matters and the Government also misdirected itself

in point of law in wholly omitting to take into account the relevant considerations which as held by the House of Lords is unlawful behaviour. In para no.15 of the judgment it further held as under: -

> ".....it has failed to realise that in effect the contractor employed labour for the company who was the real paymaster. It had failed to take into account the fact that the workmen wanted to bonus from either the company or the appellant. Naturally the workmen were not interested who paid them as long as they were paid. It would bear repetition to say again that the original mistake arose out of the assumption by the labour Commissioner that this was a case of an ordinary contract which would apply to other contractors also. He had apparently not seen the contract between the company and the appellant and that mistake was adopted by the State Government and they stuck to it in spite of the application made to them by the appellant after the disposal of the earlier appeal by this Court, giving all relevant facts. It does not appear from the communication of the Government to the appellant that they had applied their mind to any of the considerations set out in the appellant's application."

Having so hold, the Hon'ble Supreme Court directed reconsideration of the matter and thereafter, while considering the scope of Section 18(3)(b) held as under: -

> "____What the Tribunal can consider in addition to the dispute specified in the order of reference, are only matters incidental to the said disputes; and that naturally suggests certain obvious limitations on the implied power of the Tribunal to add parties to the reference before it, purporting to exercise its implied power under S.18(3)(b). If it appears to the Tribunal that a party to the industrial dispute named in the order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of the employee, it may direct that other persons should be joined who would be necessary to represent such interest. If the employer named in a reference does not fully represent the interests of the employer as such, other persons who are interested in the undertaking of the employer may be joined. Similarly, if the unions specified in the reference do not represent all the employees of the undertaking, it may be open to the Tribunal to add such other unions as it may deem necessary. The test always must be is the addition of the party necessary to make adjudication itself effective and enforceable? In other words, the test may well be, would the non-joinder of the party make the arbitration proceedings in effective and unenforceable? It is in the light of this test that the implied power of the Tribunal to add parties must be held to be limited."

In State of Maharashtra Vs. Kamani Employees' Union & Ors reported in (1975) 4 SCC 841 certain disputes were

referred by the State Government for adjudication to the industrial tribunal on 19th Dec., 1962 and when the adjudication thereof was pending, the State Government on 18th Jan., 1964 made another reference to the same tribunal during the pendency of the first reference on matters connected with. In this order of reference, it was stated that a previous reference had already been made regarding revision of the production of bonus scheme for the workmen of the company and the company made a representation to the State Government that the terms of reference already made should be supplemented so as to include the above question also. The State Government has also stated in the said order that it is of the opinion that the matter on which a further reference is asked for by the employer is "connected with or relevant to the said dispute". An objection was raised by the union before the tribunal that the second reference could not be adjudicated by the tribunal as the reference could interfere with the exercise of power of the tribunal in the matter of adjudicating the

dispute already referred. The objection however was over ruled by the tribunal. When the matter was taken to the High Court in writ petition under Article 226 of the Constitution of India, the Court accepted the contention of the union and held that the second order dated 19.1.1964 had really the effect of superseding the previous reference made on 19.12.1962 and also of interfering with the powers exercised by the tribunal in respect of the previous reference. The Hon'ble Supreme Court however reversed the judgment of the High Court holding that the second reference to the same tribunal during the pendency of the first on the matter "connected with or relevant" did not interfere with the first reference. It was neither a case of withdrawal nor of supersession of the previous reference and therefore second reference was covered by Section 10 (1)(d).

M/s. Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others reported in 1970

(1) SCC 225 was a case in which the Hon'ble Supreme Court was called upon to decide whether subsequent reference by the appropriate Government which had earlier refused to make the reference on the same question was barred by law. The Hon'ble Supreme Court held that the function of the appropriate Government under Section 10(1) of the Act of 1947 was purely administrative in nature and while deciding to make a reference it cannot go into the merits of the dispute. The Court held that in the light of the nature of the function of the Government and the object for which the power is conferred on it, it would be difficult to hold that once the Government has refused to refer it cannot change its mind on a reconsideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference. So long as an industrial dispute exists or is apprehended and the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it

from exercising it later later stage.

Similar dispute again cropped up before the Hon'ble Supreme Court in M/s. Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana & Ors reported in 1979 (1) SCC 1 wherein the Government initially refused to make a reference on a dispute pertaining to termination of two workmen. Subsequently however, the Government referred the dispute and the tribunal upon adjudication thereof found the retrenchment of the workmen to be invalid and unjustified and directed the reinstatement of the petitioner with back wages, which award was upheld even by the High Court. In appeal when the matter was taken to the Supreme Court, an argument was raised on behalf of the management that the reference itself was not competent because having once refused to make reference, the appropriate Government could not refer the same dispute again unless it came up with some fresh or additional material which must be disclosed when the

validity of the reference was challenged. Repelling the argument, the Hon'ble Supreme Court in para no.8 held as under: -

> "____when the Government declines to make a reference the source of power is neither dried up nor exhausted. It only indicates that the Government for the time being refused to exercise the power but that foes not denude the power. The power to make the reference remains intact and can be exercised if the material and relevant considerations for exercise of power are available; they being the larger interest of industrial peace and harmony. Refusal to make the reference does not tantamount to saying that the dispute, if it at all not compelling the parties to come to a talking table or before a quashi-judicial tribunal would further accentuate the feelings and a threat to direction action may become imminent and the Government may as well reconsider the decision and make the reference. It is, therefore, not possible to accept the submission that if the Government had on an earlier occasion declined to make a reference unless it be shown that there was some fresh or additional material before the Government the second reference would be incompetent. It has not been shown that the dispute had ceased to exist and the very existence of the dispute enables the Government to exercise the power under Section 10(1) andit has been rightly exercised_____."

This court in S.B.Civil Writ Petition No.4739/2003

(Union Bank of India Vs. Union of India) decided at Jaipur Bench on 18.8.2003 was called upon to decide whether a corrigendum issued by the appropriate Government in the terms of reference subsequent to the making of original reference was legally permissible. In that case also terms of reference originally made to the Central Government Industrial Tribunal-cum-labour Court was to the effect whether the action of the management of Union Bank of India in not granting Pension to Shri Sunil Kumar Dawan, Clerk who claimed to have voluntarily retired from Banks' Service from 4.3.1993, was justified and if not, what relief he was entitled to and from which date. Subsequently, the appropriate Government by corrigendum issued on 20/25.3.2003 modified the terms of the reference to the effect whether the action of the management of Union Bank of India in terminating services of Sh. Sunil Kumar Sharma, Clerk by treating him to have voluntarily retired from service from 04.03.1993 and denying him pension is legal and justified and if not, what relief was be entitled to. The

learned Single Judge of this Court dismissed the writ petition while observing that this objection could be raised by the employer even before the tribunal. The aforesaid order was upheld by the Division Bench of this Court in D.B. Civil Special Appeal No.978/2003, decided on 21.1.2004 holding that there is no specific provision prohibiting modification of the dispute referred and therefore dismissed the appeal.

The Division Bench of this Court in Goodyear (India) Ltd., Jaipur Vs. Industrial Tribunal, Rajasthan, Jaipur & Ors. (D.B. Civil Writ Petition No.290/1967) decided on 8th May, 1988 held that it was lawful for the Government to make a reference to the Industrial Tribunal even though it earlier refused to make such a reference as earlier refusal by itself did not mean that the powers of the Government under Section 10 of the Industrial Disputes Act stood exhausted. It was held that making a reference under Section 10(1) of the Act, the Government was an administrative Act, which was neither judicial nor a quashi-judicial act and therefore it

was open to the Government to give a different decision on the ground of expediency or if it found that the earlier order lacked from the considerations.

The Division Bench of this Court in Jaipur Spinning & weaving Mills Ltd. Jaipur Vs. State of Rajasthan reported in FLR 1961 pg.161 was called upon to decided that the when a question is raised whether a reference can be validly superseded or cancelled, what has to be seen actually. In that case,the Government had made reference in the year 1958 for adjudication to the Industrial Tribunal and shortly thereafter on 19th April, 1958, the Government issued another notification, but this time with an improved version. The two notifications pertained to the similar issues between the same parties. The contention raised on behalf of the management was that once these matters of dispute were referred to the industrial tribunal, it was no longer open for the government to supersede earlier reference and make fresh reference as was done in that case. The Government

came out with an explanation that although on the terms of the reference words used indicated that the previous reference was superseded, but in substance there has been no real supersession of the previous reference and all that has happened is that the previous reference has been further supplemented and amplified. The subsequent notification is more or less in the nature of an amendment to the previous notification making the reference which the Government was competent to issue on the authority of the law. Before the Division Bench, the judgment of the Hon'ble Supreme Court O.N. Ganguly (supra) was also relied upon by learned counsel for the petitioner. The Division Bench of this Court while interpreting the judgment of the Hon'ble Supreme Court held as under: -

> "If under the law it was open to the Government to issue a fresh notification amending the points in dispute in the previous case of supplementing certain points for the decision of the Tribunal, we are unable to hold that the procedure followed in the present instance was in violation of the law or unwarranted by th law. The decision of the Supreme Court is really distinguishable. There

the facts were entirely different."

The Division Bench went on to distinguish the case of O.N. Ganguly , cited supra and held that "the mere fact that the word 'supersede' has been used should not effect the validity of the reference so long as none of the provisions of the law has been violated in the procedure adopted. One has to look to the substance of the matter and not merely to the form."

I have carefully examined the ratio of the judgment in O.N. Ganguly cited by learned counsel for the petitioner. Apart from the distinction pointed out by the Division Bench of this Court in Jaipur Spinning & Weaving Mills (supra) it should be noticed that that was a case where the issue involved was one pertaining to cancellation or supersession of the reference made and not of the modification or correction. The said case is therefore distinguishable on facts and it ratio cannot be applied to the facts of the

present case. Besides that, in para no.10 of the said judgment, the Hon'ble Supreme Court has taken categorical note of Section 10(5) of the Act and has observed as under :-

> "____the condition precedent for the reference tot he industrial tribunal is that the appropriate government must be satisfied that an industrial dispute exists or is apprehended. it is not in every case where the parties allege the existence of an industrial dispute that a reference would be made under sec. 10(1); it i only where the test of subjective satisfaction of the appropriate government is satisfied that the reference can be made. thus it is clear that the appropriate government is given an important voice in the matter of permitting industrial disputes to seek adjudication by reference to the industrial tribunal. but once an order in writing is made by the appropriate government referring an industrial dispute to the tribunal for adjudication under sec. 10(1), proceedings before the tribunal are deemed to have commenced and they are deemed to have concluded on the day on which the award made by the tribunal becomes enforceable under sec. 17a. this is the effect of s.20(3) of the act. this provision shows that after the dispute is referred to the tribunal,during the continuance of the reference proceedings, it is the tribunal which is seized of the dispute and which can exercise jurisdiction in respect of it."

The effect of the impugned corrigendum in the

present case is at the maximum would be addition of a new party although in substance it is a substitution of a party. But if the Government upon consideration of the facts is convinced about the union agitating the matter for the benefit of the workmen, mere substitution of one union by another cannot take the matter outside the purview of Section 10(5). If the law enunciated by Division Bench in Jaipur Spinning & Weaving Mills (supra), is applied to the facts of the present case, it would be evident that even after substitution of one union by another, the substance of the matter would remain the same and reference would work for the benefit of the same workmen and if answered in affirmative the same workman would be its beneficiary. In so far as management is concerned, it cannot therefore have any right to claim that instead of one, another union should contest the matter for the cause of workmen. If the appropriate government, as it were, can make a reference afresh at any time even if it has declined to make such reference in the past, there is no reason why it cannot issue

a corrigendum so as to make addition of the parties to dispute or substitute either of them provided such addition or substitution does not result in bringing about a completely stranger person as either employer or employee to the fore. This is all the more so when the Government on the basis of material available with it is satisfied that doing so would be in the interest of industrial peace and harmoney which is the object with which the Industrial Disputes Act was enacted. Such a power in my considered view, cannot be denied to appropriate Government.

As a result of aforesaid discussion, these two writ petitions fail and are hereby dismissed with no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-